NOTES OF CASES.

Telegraph Companies—Effect of Federal Post Roads Act—Postal Telegraph Co. v. City of Portland, 228 Fed. 254.—The principal case after citing Williams *v.* Talladega (226 U. S. 404) and Western Union Telegraph Co. *v.* Gottlieb (190 U. S. 412), laid down the following principle: The Federal Post Roads Act (July 24, 1866, chap. 230, 14 Stat., 221, Comp. St., 1913, secs. 10072-10077), granting the right to telegraph companies to use the military and post roads of the United States for their poles and wires, is permissive in character only, and does not create corporate rights or privileges to carry on the business of telegraphy, which are derived from the laws of the State under which the company is incorporated, and the State is not by reason of such act prevented from taxing the real or personal property of the company within its borders, nor from imposing a license tax upon the right to do a local business within the State.

Banks and Banking—Forged Indorsement on Check—Recovery of Money Paid—Swan-Edwards Co. v. Union Sav. Bank (Ga.), 87 S. E. 825.—The syllabus in the principal case was written by the court and is as follows: "A bank is presumed to know the signature of one of its depositors, and therefore cannot recover from a bona fide holder for value money paid by the bank upon a check to which the drawer's signature was forged, unless it appears that the holder, by his own negligence, contributed to the success of the fraud practiced, or his conduct had a tendency to mislead the drawee, who was himself free from fault. Woods *v.* Colony Bank, 114 Ga. 683, (2), 685, 40 S. E. 720, 56 L. R. A. 929; 2 **Michie on Banks and Banking,** § 147, p. 1196, and cases there cited. Any seeming conflict in principle between this ruling and the ruling in Woods *v.* Colony Bank, supra, disappears on examination of the particular facts in that case."

Carriers—Delivery of Goods—Liability—Bill of Lading—Killingworth v. Norfolk, etc., R. Co., 87 S. E. 947.—The North Carolina Supreme Court in the principal case held that a carrier of property which by the terms of the bill of lading is deliverable to the shipper's order is liable for its value to the true owner if he delivers it to the consignee or any one else without such order.

The court in the principal case used the following language and cited the following authorities: "It was the plaintiff's duty, and not the defendant's, to procure the indorsement of the trust company, or else to write to the consignor and get authority for the delivery of the goods to him. It is well settled that a bill of lading must be

properly indorsed before the carrier is justified in making delivery. The authorities are numerous and all in accord. Railroad Co. *v.* Bank, 137 Ga. 391, 73 S. E. 637; Stone *v.* Swift, 4 Pick. (Mass.) 389, 16 Am. Dec. 349; Douglas *v.* Bank, 86 Ky. 176, 5 S. W. 420, 9 Am. St. Rep. 276; 1 Hutch. on Carriers, § 177. Michie on Carriers, § 530, says: 'A carrier of property, which by the terms of the bill of lading is deliverable to the shipper's order, is liable for its value to the true owner, if he delivers the property to the consignee or any one else without order.'"

Banks and Banking—Misappropriation of Trust Funds—Liability of Bank—United States, etc., Co. v. Union Bank, etc., Co., 228 Fed. 448.—In the principal case it was held that where trust funds are deposited in a bank which has knowledge of their character, the bank becomes liable in equity to the beneficiaries of the trust if it obtains payment of a debt from the depositor personally to itself from the deposit, or affirmatively and intentionally aids him in wrongfully appropriating any part of the funds to his own debts.

The court in deciding this point said: "We think this proposition follows from the decision in Bank *v.* Insurance Co., 104 U. S. 54, 26 L. Ed. 693. True, in that case, Mr. Justice Matthews called attention to the fact that the court was not dealing with a voluntary application of the fund by the check of the depositor, but with an attempt to enforce a banker's lien; but we do not see a controlling distinction between the two situations, as the former has developed in this case. Once admitting that the fund belongs in equity to the beneficiary and that the bank knows this, it seems clear that the bank can get no better right against the real owner from the fact that the depositor, trustee, colludes with the bank in the wrongful application."

It was further held that the bank is not relieved from such liability on account of money received on its own debt by the fact that the depositor had funds of his own mingled in the deposit, but accepts the payment as its peril of having to refund if the trust deposit is thereby depleted. The judge said: "this is the teaching, though not the holding, of the case in 104 U. S."

The court also decided that the bank, in such a case, is not protected from liability by the fact that the money of numerous beneficiaries is mingled in the deposits, which is added to from many sources and drawn against for many purposes until the identity of each owner's part is lost. The amount wrongfully taken from the fund must stand to the beneficiaries in the same relation as the remainder does, and the liability is to them as a class; and where there is no right of preference between them, and in the absence of clear proof that the money of any particular owner remains, they are entitled to share pro rata in the fund remaining and in such money as may be recovered.